UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JNK HOLDING LLC	*	
	*	
Plaintiff,	*	
	*	Civil Action No. 15-cv-10591-IT
v.	*	
	*	
SESAME CZ, LLC, D/B/A ROKA	*	
	*	
Defendant.	*	

ORDER

May 11, 2015

TALWANI, D.J.

Before the court is Plaintiff JNK Holdings LLC's letter requesting that the court withdraw its Order of May 7, 2015 [#12] directing Plaintiff to serve both its Motion for Default [#6] and Motion for a Default Judgment [#10] on Defendant Sesame CZ, LLC, D/B/A/ Roka in accordance with Federal Rule of Civil Procedure 5(b). In light of Cutting v. Allenstown, 936 F.2d 18 (1st Cir. 1991), which holds that a defendant becomes "a party in default" under Rule 5(a) when failing to appear and answer within the required period after being served, see id. at 21 n.1, the court withdraws its Order of May 7, 2015 and sets a hearing for Plaintiff's motion for default for June 16, 2015 at 3 p.m.

Under Federal Rule of Civil Procedure 55(b)(2), "[i]f the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 7 days before the hearing." The First Circuit has interpreted this notice requirement to apply to defaulting parties who have not entered a formal appearance but have "indicated to the moving party a clear purpose to defend the suit." Key Bank of Maine v. Tablecloth Textile Co., 74 F.3d 349, 353 (1st Cir. 1996) (quotation marks and citations omitted). Here, the Complaint and accompanying exhibits document Plaintiff's written and oral communications with Defendant's counsel, which include settlement negotiations and multiple exchanges of settlement agreements. From these papers, the court cannot discern the full extent of the parties' communications and whether Defendant indicated a clear purpose to defend the suit.

Nevertheless, these communications demonstrate Defendant's active engagement and participation in this case. In light of this engagement and participation, and in the interests of judicial economy, fairness, and a preference to adjudicate claims on their merits, the court directs Plaintiff to serve Defendant with its Motion for a Default Judgment [#10] and provide Defendant with notice of the hearing on its motion set forth herein.

IT IS SO ORDERED.

Date: May 11, 2015

/s/ Indira Talwani
United States District Judge